

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD SLEZAK,  
Plaintiff,  
v.  
TCIF, et al.,  
Defendants

No. C-05-3537 MMC

**ORDER GRANTING PLAINTIFF'S  
REQUEST FOR EXTENSION OF TIME  
TO FILE FIRST AMENDED COMPLAINT;  
DEEMING FIRST AMENDED  
COMPLAINT FILED; DENYING AS  
MOOT MOTIONS TO DISMISS;  
DENYING REQUEST FOR ENTRY OF  
DEFAULT**

Before the Court is plaintiff Richard Slezak's request for an extension of time to file his First Amended Complaint. Good cause appearing, the request is hereby GRANTED, and the First Amended Complaint is deemed FILED as of March 24, 2006.

Also before the Court is defendant Select Portfolio Servicing, Inc.'s motion, filed February 2, 2006, to dismiss plaintiff's original complaint, and defendant TCIF, LLC's motion, filed March 24, 2006, to dismiss plaintiff's original complaint. Because a party may amend a pleading "once as a matter of course at any time before a responsive pleading is served," see Fed. R. Civ. P. 15(a),<sup>1</sup> and because "an amended pleading supersedes the original, the latter being treated thereafter as non-existent," see Bullen v. De Bretteville, 239


<sup>1</sup>A motion to dismiss is not a "responsive pleading." See Crum v. Circus Circus Enterprises, 231 F. 3d 1129, 1130 n. 3 (9<sup>th</sup> Cir. 2000).

1 F. 2d 824, 833 (9<sup>th</sup> Cir. 1956), cert. denied, 353 U.S. 947 (1957), the Court hereby DENIES  
2 as moot the motions to dismiss the original complaint.

3 Finally, before the Court is plaintiff's request, filed March 15, 2006, for entry of  
4 default against TCIF, LLC. As discussed above, the instant action now proceeds on the  
5 First Amended Complaint, and the time to respond to the First Amended Complaint has not  
6 yet passed. Accordingly, the request for entry of default is hereby DENIED.

7 **IT IS SO ORDERED.**

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9 Dated: March 29, 2006

  
MAXINE M. CHESNEY  
United States District Judge